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ER 9--6838

10 September 1957

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: The Passing On Of Information To The Congress

The purpose of this memorandum is to analyze the legal basis for withholding of classified information concerning the Agency from the Congress, and to suggest certain possible means of helping our congressional friends to provide some assurance to their colleagues that there is an adequate congressional scrutiny of Central Intelligence Agency activities.

Legislative Background. Section 102(d)(3) of the National Security Act of 1947 provides that the Director of Central Intelligence "shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." This legislative instruction has never been interpreted by a court, and there is no legislative history which helps to define its scope. The language of the section was derived from a letter of 22 January 1946, from President Truman to the Secretaries of State, War and Navy (attached), which established the National Intelligence Authority and the position of a Director of Central Intelligence. Paragraph 10 of this letter provides "In the conduct of their activities the National Intelligence Authority and the Director of Central Intelligence shall be responsible for fully protecting intelligence sources and methods." I am unable to find any good background information as to the reasons for this language in the Truman letter, although according to the recollection of some old hands, it may have been partially related to the desires of the Army and Navy Intelligence Services to insure that the Director of Central Intelligence wouldn't expose any of their sources or methods.

Irrespective of the original intent of the language in the Truman letter or in the National Security Act, the Central Intelligence Agency Act of 1949 definitely relates the protection of sources and methods to information concerning the CIA. Section 7 of the CIA Act of 1949 states,

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"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of Section 102(d)(3) of the National Security Act of 1947 . . . . . that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from . . . . . the provisions of any . . . . . law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." The Agency was specifically exempted in this section from the provisions of a statute which set up the Civil Service Register, and another proviso of the section provided that the Director of the Bureau of the Budget should make no reports to the Congress regarding the Agency, under a law (since repealed) relating to reports on the number of full-time government civilian employees and consultants. There is no special legislative history in connection with Section 7 of the CIA Act. The justification submitted by the Agency to the Congress related strictly to the problem of protecting personnel information, and there was evidently no controversy over the section within the Congress.

It is to be noted that the above provisions, and their justifications, made no specific reference to the desirability of withholding anything but personnel or organizational information from congressional scrutiny. The justification for Section 6(a) of the CIA Act of 1949, however, went into considerable detail as to the necessity for maintaining as classified information the amount of funds appropriated to CIA. The justification refers principally to unvouchered funds, but it is clear that the argument was intended to apply to the total budget of the Agency. It emphasized the fact that every important foreign intelligence service examines the records of other governments to try to determine what funds, specifically or by implication, are provided for intelligence activities, and further pointed out that none of the budgets for espionage or counter-espionage services of any other country are published in any form. By way of illustration - it was stated that British Secret Intelligence has never made known to most members of the British Government the funds available to it. Section 6(a) of the CIA Act, which was the subject of this justification, provides that the Agency is authorized to transfer to and receive from other agencies such sums as may be approved by the Bureau of the Budget, for the performance of authorized Agency functions, and that any other agency is authorized to transfer to or receive from the CIA such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. It further provides that sums

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transferred to the Agency under the section may be expended under the authority of the CIA Act without regard to any limitations on the appropriations from which such sums are transferred.

In summary, the legislative history as to the necessity for maintaining the security of CIA funds arose in connection with justifying the provision of the CIA Act (Section 6(a)) which authorized the burying of our funds in other agency appropriations. The maintenance of security on personnel, organization and general "sources and methods" is related to Section 7.

Proposed Action. With respect to the problems expressed by Messrs. Cannon and Mahon at our recent appropriations hearing, I think we should offer to establish some degree of contact with the Defense Subcommittee chaired by Mahon. At a minimum, I recommend that the Director visit Mr. Mahon at a very early stage of the next Session, and offer to brief the Subcommittee at the beginning of their hearings on the Defense budget, with particular reference to the Soviet military strength. As the Director knows, many Defense Subcommittee members have complained about the fact that they get all their intelligence from two-star Generals and Assistant Secretaries, and none from the "horse's mouth." If the Director were to make such an offer, I think he should at the same time extract from Mahon a promise to protect him in the event that committee members start probing on facts regarding CIA and its operations.

The above proposal would establish a contact between CIA and the Defense Subcommittee but it really is not responsive to the problems discussed by Mahon and Cannon at our hearing, which related more to the question of whether we couldn't make available certain information on budget, personnel, and possibly even activities. It is my impression that the Director convinced the committee members as to the danger of making public disclosures on any of these items. Whether or not we should agree to make a limited amount of this type of information available to the Defense Subcommittee on a classified basis is another question. I do not think we should take any initiative in offering to do this, but that we should be thinking about the minimum amount of such information we might get away with in the event that we receive a request to furnish some sort of information on a broader basis to the Appropriations Committee.

I don't believe that the foregoing is a problem with respect to other committees with which we deal, at least as long as the present chairmen continue in office. I would like to again suggest, however, that we reconsider our present position regarding the briefing of Senate Foreign Relations and House Foreign Affairs Committees. In the first place, the Kelly-type episode is bound to recur. Apart from this, however, I feel that these committees have as much, if not more of a right, to comprehensive briefings on the world situation than any other committees of the Congress. The position that it is up to the Department of State to brief these committees is a defensible one, but the fact remains that this position is not making the Agency any friends, and it is in fact depriving us of potential friends on the two committees which are generally powerful, and which have provided major sources of Congressional moves for a Joint Committee.

The Director has been rightfully concerned with the problem of setting a precedent in briefing the Foreign Relations and Foreign Affairs Committees, but I feel that he can be protected if he makes the proper initial arrangements with the Chairmen, leading Minority members and the Chief Clerk. I would have in mind at most an annual briefing by the Director in the opening days of the Congress, which would not be specifically related to mutual security or any other legislative request, and which would cover the world situation. Any further briefing of these committees or of any of their subcommittees could be handled, by prior agreement, by Agency personnel below the Director's level. I recognize that there are dangers inherent in this procedure, and that in any event it would have to be worked out in the most careful cooperation with the Department of State and in consultation not only with the Foreign Relations and Foreign Affairs Committees, but with our parent Subcommittees as well. One or all of these groups might put forward some excellent reasons why this is a bad idea, but I believe it is at least worth exploring with them. If handled properly, this could be an important factor in winning congressional friends for the Agency, and in helping to avert renewed moves for a Joint Committee.



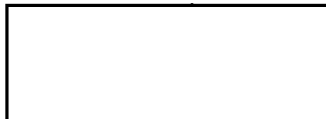
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cc: DDCI

release the document  
(But not the DDC's  
note)

MEMORANDUM FOR: Mr. Earman

The Director has requested this memorandum.



10 Sept. 1957  
(DATE)

FORM NO. 101 REPLACES FORM 10-101  
1 AUG 54 WHICH MAY BE USED.

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CENTRAL INTELLIGENCE AGENCY

OFFICE OF THE DEPUTY DIRECTOR

DCI :

Re page 3, "Proposed  
Action", first paragraph:

I should think  
that moving into this  
field not only would  
set bad precedents  
but would have bad  
effects on Community.  
Recommend against it.

CP

12 Sept